

Remarks/Arguments

Applicants have received and carefully reviewed the Office Action of the Examiner mailed September 10, 2010. Currently, claims 1-40 remain pending. Claims 1-40 have been rejected. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections – 35 USC § 101

Claims 1-20 were rejected under 35 U.S.C. 101, as directed to non-statutory subject matter. Specifically, the Examiner has asserted that “computer readable medium” may be interpreted to include propagation signals and carrier waves. Applicant has amended claims 1 and 12 to further prosecution of this case. As such, this rejection is considered moot.

Claim Rejections – 35 USC § 102

Claims 1-12, 25-31, and 35-40 were rejected under 35 U.S.C. 102(e) as anticipated by Guyot et al. (U.S. Published Patent Application No. 2006/0046699), hereinafter Guyot. After careful review, Applicant must respectfully traverse this rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (See MPEP § 2131). Nowhere does Guyot appear to teach or suggest, “communicating means operable to communicate the first avatar to the ~~first~~ second communication device and the second avatar to the ~~second~~ third communication device, wherein communicating the first avatar comprises displaying a visual representation of the ~~first~~ second avatar on the first communication device and communicating the second avatar comprises displaying a visual representation of the ~~second~~ third avatar on the second communication device”, as recited in claim 1. The system of amended claim 1 presents multiple identities simultaneously to individuals or members of groups based upon identifying attributes of their respective communication

devices. That is, a user may send one avatar to a first user and a second different avatar to a second user thus simultaneously expressing multiple identities.

Instead, Guyot appears to teach a system in which a sequence of avatar moods associated with an avatar may be sent to a number of users, but all concurrent users receive the same avatar/avatar mood, without differentiation, at any given moment. Accordingly, Guyot does not appear to disclose each and every element as set forth in the claim and Applicant respectfully requests that the rejection of claim 1 be withdrawn.

Turning to currently amended independent claim 12, Guyot does not appear to disclose “a communicating means operable to communicate an avatar in the virtual environment to a mobile telephone handset of the first person subsequent to the first person accessing the environment”. (Emphasis added.)

It appears that each user of the system of Guyot only receives an avatar/avatar mood corresponding to the users which are current users of the system. Thus if a user is not logged on, his or her avatar/avatar mood will not be presented to a first user accessing the system. Although Guyot does appear to make provision for an SMS to be sent to a first person not currently logged on to the system which SMS serves to invite the first person to log on, this does not necessarily ensure that the first person receiving the SMS will receive a communicated avatar in the virtual environment subsequent to the first person accessing the environment. Thus the claimed function is not inherent in the system disclosed by Guyot.

This may be seen by considering the scenario postulated by Guyot in which user A logs on to the system and selects only user B for communication. There appears to be no representation in paragraph [0041] that user A has access to anything other than “a list of end users at this point. When only one end user, B, is selected, an SMS is sent to communication terminal 2. As discussed at paragraph [0042] the SMS could include the telephone number of user A; however Guyot appears to disclose that an avatar/avatar mood corresponding to user A is only presented to user B when multiple conditions are met. As an initial condition, user A must still be online when user B logs in. Further, user A must still be online when a previously logged on user B confirms that he wants to participate, thus indicating that the avatar/avatar mood of user A is not immediately presented to user B when user B accesses the system. Otherwise, the initial condition

repeats with the roles reversed. If user A has logged off in the interval and does not log back on, it does not appear that an avatar/avatar mood of user A will ever be presented to user B. Nothing in the cited figures and text appears to support the inherent presentation of an avatar/avatar mood corresponding to user A when user B accesses the system.

Of greater importance, Guyot does not appear to disclose that the avatar/avatar mood of user A which may, under favorably selected circumstances, be displayed to user B is in anyway “a visual representation of the avatar in the virtual environment” as recited in claim 12. As described by Guyot, avatar/avatar moods appear to be presented following selection from an established collection and thus do not appear to convey a visual representation of the avatar in the virtual environment. Instead, the representation of a user in the virtual environment appears to be provided as a blinking spot on a map rather than as a visual representation of the avatar in the environment. Thus the avatar/avatar mood may be displayed to user B without the avatar itself being visually represented as present in the environment.

“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’ ” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (MPEP 2112, III.)

Accordingly, Guyot does not appear to anticipate each and every element as set forth in claim 12 and Applicants respectfully request that the rejections be withdrawn.

Additionally, for similar reasons as well as others, claims 2-11, which depend from claim 1, and include significant additional limitations, are believed to be not anticipated by Guyot and Applicant respectfully requests that the rejections be withdrawn.

With regard to dependent claims 25-31, and 35-40, which depend from claims 21 and 32 respectively, Applicant notes that the Examiner has not asserted that independent claim 21 or independent claim 32 is anticipated by Guyot under 35 U.S.C. 102(e) nor do those claims stand rejected under 35 U.S.C. 102(e) in this Office Action. Further, as

discussed above, Guyot does not appear to anticipate claims 1-11 or claims 12 and 15-20. Accordingly claims 25-31, and 35-40, which depend from independent claims 21 and 32 respectively and include significant additional limitations thereto, are believed to be not anticipated by Guyot and Applicant respectfully requests that the rejections be withdrawn.

Claim Rejections – 35 USC § 103

Claims 13-14 and 33-34 were rejected under 35 U.S.C. 103(a) as being unpatentable over Guyot in view of Toyota et al. (U.S. Published Patent Application No. 2003/0028596), hereinafter Toyota. After careful review, Applicant must respectfully traverse this rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP § 2143.03).

In addition to the deficiencies of Guyot as applied to independent claim 12 discussed above, the Examiner has acknowledged that Guyot “fails to disclose user’s access authority to virtual environment” and asserts that Toyota teaches that limitation; however the determination of a level of authority is not a limitation of claim 12.

Therefore, Guyot in view of Toyota does not appear to teach all the claim limitations of independent claim 12, as is required to establish a *prima facie* case of obviousness.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03)

Accordingly, claims 13 and 14, which depend from nonobvious independent claim 12, also are believed to be nonobvious and Applicant respectfully requests that the rejections be withdrawn.

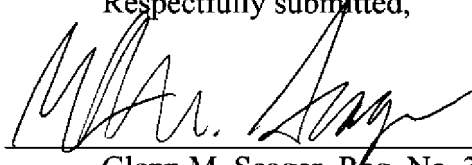
Although the Examiner has made reference to dependent claims 13 and 14 in discussing claims 33 and 34, claims 33 and 34 depend from independent claim 32 which

does not stand rejected in this Office Action. Accordingly claims 33 and 44, which depend from nonobvious independent claim 32, also are believed to be nonobvious and Applicant respectfully requests that the rejections be withdrawn.

In view of the foregoing, all pending claims are believed to be in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Date: Dec. 10, 2010

A handwritten signature in black ink, appearing to read "Glenn M. Seager", written over a horizontal line.

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